

The Hotel Operators' Occupation Tax applies to gross receipts received from a person who occupies a room or becomes irrevocably liable to pay rent for the right to occupy a specific room or rooms. See 86 Ill. Adm. Code 480.101. (This is a GIL.)

April 28, 2008

Dear Xxxxx:

This letter is in response to your letters dated September 5, 2007, and January 23, 2008, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This firm represents Hotel which operates hotel facilities in your state at the location reference above. In connection with same, Hotel from time-to-time enters into group sales agreements ('Agreement'), which provide for various fees to be charged in certain instances.

What follows is an outline of six fees charged by the Hotel:

1. Early Departure Fee

In the event that a guest who has reserved a room within a group's block of rooms checks out prior to the guest's reserved checkout date, the Hotel charges an early departure fee to the guest's individual account, unless they advise the Hotel at or before check in. Any fees received as early departure fees are deducted from any amount owed by the group for sleeping room attrition.

2. Room Attrition Fee

Each Agreement sets forth a rate for each room night not utilized below the number of nights reserved pursuant to the Agreement. The amount is a reasonable estimate of the

harm the attrition will cause the Hotel. The Hotel agrees that after receiving payment of this fee, it will not seek additional damages.

3. Food & Beverage Attrition

Each Agreement sets forth a minimum food and beverage revenue a part of an event. If the Group consumes less food and beverage than the minimum, the Group must pay the Hotel a fee in the amount of the difference between what was actually spent on food and beverage as part of the event and the food and beverage minimum.

4. Cancellation Fee

In the event that the Group decides to cancel the event at any time after the execution of the Agreement, the following cancellation charges apply:

<u>Time</u>	<u>Percentage</u>
Date of Signature to 190 days prior to arrival	25% total revenue
189 days to 120 days prior to arrival	50% total revenue
119 days to 90 days prior to arrival	75% total revenue
89 days to arrival	100% total revenue

5. No-Show Fee

In order to reserve a room, Hotel guests must put a deposit in the amount of the room rental rate plus applicable taxes. Failure to cancel the room within the prescribed period of time or failure to occupy the room results in a forfeiture of this deposit, as a no-show fee.

6. Meeting Room Cancellation Fee

In order to reserve a meeting room, the Hotel requires deposit. Fail to cancel the room within the prescribed period of time or failure to occupy the room results in a forfeiture of this deposit, as a cancellation fee.

Please provide me with guidance on whether: (i) any of the referenced fees are subject to sales/use tax in your state; and (ii) any of the referenced fees are subject to hotel occupancy tax in your state.

It is my understanding that you will provide this guidance at no cost to the taxpayer. Please advise if you have any questions.

**DEPARTMENT'S RESPONSE:**

The Hotel Operators' Occupation Tax Act ("HOOT") imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel. Since the HOOT is imposed on receipts from renting rooms for living quarters, or for sleeping or housekeeping accommodations, the tax does

not apply to the receipts from the renting of rooms for other purposes, such as for use as display rooms or sample rooms, meeting rooms, offices or as private dining rooms.

HOOT defines "rent" as "the consideration received for occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature." See 35 ILCS 145/2(6). The definition of "rent" must be read in conjunction with the term "occupancy." HOOT defines "occupancy" as "the use or possession, or the right to the use or possession, of any room or rooms in a hotel for any purpose, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or rooms." See 35 ILCS 145/2(3).

Guaranteed room charges and early departure fees generally are subject to HOOT, regardless of whether they are called room attrition fees, no-show fees or cancellation fees. Guaranteed room charges and early departure fees represent consideration received from persons who have checked into a hotel or have otherwise become irrevocably liable to pay rent for the right to occupy a room, albeit in the case of departure fees, that the fee may be an amount less than the full rental rate. Once a person occupies a room or becomes irrevocably liable to pay rent for the right to occupy the room, these amounts are generally charged to mitigate the losses accruing due to the vacancy of the room. Such charges are part of the contractual arrangement between the guest and hotel operator and represent gross receipts directly related to the right to occupy a room at a hotel. As such, they are subject to Hotel Operators' Occupation Tax.

A food and beverage fee or charge may be subject to Retailers' Occupation Tax. It appears from the description provided that the Food and Beverage Attrition fee referred to in your letter is similar to a minimum charge for food or beverage. Receipts from "minimum charges" imposed by retailers of food or beverages or both are generally subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2145.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters  
Associate Counsel

RSW:msk